

E4PMWALP

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

09 Cr. 722 (MGC) (KNF)

5 STEPHEN WALSH,

6 Defendant.

7 -----x

8 New York, N.Y.

9 April 25, 2014

10:40 a.m.

10 Before:

11 HON. KEVIN N. FOX,

12 Magistrate Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the

17 Southern District of New York

BENJAMIN NAFTALIS

18 JESSICA MASELLA

Assistant United States Attorneys

19 SHER TREMONTE

Attorneys for Defendant

20 BY: MICHAEL TREMONTE

JUSTIN M. SHER

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(Case called)

MR. NAFTALIS: Good morning, your Honor, Benjamin Naftalis and Jessica Masella for the government. We are joined by FBI Special Agent Michael Braconi.

MR. TREMONTE: Good morning, your Honor, Michael Tremonte and Justin Sher for Mr. Stephen Walsh. Good morning.

THE COURT: Good morning.

Is there an application on behalf of the defendant?

MR. TREMONTE: I'm sorry, your Honor?

THE COURT: Is there an application on behalf of the defendant?

MR. TREMONTE: Yes. The defendant wishes this morning to enter a plea of guilty.

THE COURT: Is he tendering a plea of guilty to all charges made against him?

MR. TREMONTE: No. Specifically to the two charges that are specified in the plea agreement. He is pleading pursuant to a written plea agreement dated April 24, 2014. And the charge is one count of securities fraud in violation of Title 15, United States Code, Section 78j(b) and 78ff.

THE COURT: Mr. Walsh, I have before me indictment 09 Cr. 922, a multicount indictment that we will be focusing on Count Two of the indictment only during the proceeding.

You have a right to have this morning's proceeding presided over by a district judge. You may, if you wish,

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1 consent to have a magistrate judge preside at this morning's
2 proceeding.

3 In that connection I have before me a document which
4 is labeled consent to proceed before a United States Magistrate
5 Judge on a felony plea allocution.

6 Mr. Cancellarich, will you swear the defendant,
7 please.

8 THE DEPUTY CLERK: Will the defendant rise and please
9 state his name on the record.

10 THE DEFENDANT: Stephen Walsh.

11 (Defendant sworn)

12 THE COURT: Mr. Walsh, I want to show you the consent
13 form about which I was speaking a moment ago.

14 Do you recognize the document?

15 THE DEFENDANT: Yes, I do, your Honor.

16 THE COURT: Did you have an opportunity to review it
17 with your attorneys?

18 THE DEFENDANT: Yes, I have, your Honor.

19 THE COURT: Is there anything in the consent form that
20 you do not understand?

21 THE DEFENDANT: No, your Honor.

22 THE COURT: Do you acknowledge that it explains in
23 greater detail what I mentioned to you a moment ago about your
24 right to have this morning's proceeding presided over by a
25 district judge and, further, that by signing the agreement you

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1 are agreeing that a magistrate judge may preside at this
2 morning's proceeding?

3 THE DEFENDANT: Yes, I do, your Honor.

4 THE COURT: Is your true signature on the consent
5 form?

6 THE DEFENDANT: Yes, it is, sir.

7 THE COURT: Did anyone force you to sign the document?

8 THE DEFENDANT: No.

9 THE COURT: Let me turn my attention to your counsel.
10 Is your signature also on the consent form?

11 MR. TREMONTE: Yes, it is, your Honor.

12 THE COURT: Very well. I shall sign the document and
13 we will continue.

14 Mr. Walsh, would you state your full name, please?

15 THE DEFENDANT: Stephen Walsh.

16 THE COURT: Within the last 24 hours, have you
17 consumed any medicine, alcohol or drugs that would affect your
18 ability to understand what you are doing here today?

19 THE DEFENDANT: No, I have not.

20 THE COURT: Are you under the care of a physician or
21 psychiatrist for any condition?

22 THE DEFENDANT: Yes.

23 THE COURT: Which physician or psychiatrist?

24 THE DEFENDANT: Dr. Gary Wadler is my general
25 physician, and just normal -- he is my internist. And

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1 Dr. Terry Weill is a psychiatrist that I've been seeing for
2 probably 25 years.

3 THE COURT: Is there anything about the treatment that
4 you are receiving from either the physician or psychiatrist for
5 your conditions that would affect your ability to understand
6 what you are doing here today?

7 THE DEFENDANT: No, sir.

8 THE COURT: Have you ever been treated for alcoholism
9 or drug addiction?

10 THE DEFENDANT: I am a recovering alcoholic.

11 THE COURT: Is there anything about any treatment that
12 you have received in connection with that condition that would
13 affect your ability to understand what you are doing here
14 today?

15 THE DEFENDANT: No, sir.

16 THE COURT: Sir, do you feel all right today?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Can you tell me what the extent of your
19 education is, sir?

20 THE DEFENDANT: I have a PA in political science and I
21 have about a year and a half of graduate school at Baruch in
22 finance and investments.

23 THE COURT: Have you received a copy of indictment 09
24 Cr. 722?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Do you wish to have Count Two of the
2 indictment, which I indicated earlier we will be focusing on,
3 read to you now in open court?

4 THE DEFENDANT: No.

5 THE COURT: Do you understand what it says that you
6 did at Count Two of the indictment?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Have you had sufficient opportunity to
9 speak with your attorneys about the charge contained at Count
10 Two of the indictment and how you wish to plead to it?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Are you satisfied with the assistance that
13 your counsel has rendered to you in connection with this
14 matter?

15 THE DEFENDANT: Yes, I am, sir.

16 THE COURT: Are you ready to plead to Count Two of
17 indictment 09 Cr. 722?

18 THE DEFENDANT: Yes, I am, your Honor.

19 THE COURT: What is your plea, sir, guilty or not
20 guilty?

21 THE DEFENDANT: Guilty.

22 THE COURT: Are you a United States citizen?

23 THE DEFENDANT: Yes, I am, your Honor.

24 THE COURT: Do you understand that by pleading guilty
25 to the offense that is set forth at Count Two of the

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1 indictment, you may be giving up certain valuable civil rights
2 that you possess; among others, the following: The right to
3 vote, the right to hold public office, the right to serve on a
4 jury, the right to possess any type of firearm, including
5 rifles and shotguns, the right to be considered for certain
6 types of employment, and the right to possess or obtain certain
7 professional licenses?

8 THE DEFENDANT: Yes, I'm aware of that, your Honor.

9 THE COURT: I have to determine, sir, whether your
10 plea of guilty is being made voluntarily and whether you
11 understand fully the nature of the charge made against you at
12 Count Two of the indictment and the consequences of your plea,
13 so I shall be asking you additional questions. I first want to
14 ensure that you understand the nature of the charge made
15 against you at Count Two of the indictment.

16 Count Two of the indictment charges you with
17 securities fraud in violation of Title 15, United States Code,
18 Sections 78j(b) and 78ff; Title 17, Code of Federal
19 Regulations, Section 240.10b-5 and Title 18 United States Code
20 Section 2. Section 2 of Title 18 makes it an offense for a
21 person to aid or abet another in the commission of a crime.

22 The law provides as a maximum penalty for the offense
23 set forth at Count Two of the indictment the following: A
24 maximum sentence of 20 years' imprisonment, a maximum fine of
25 the greatest of \$5 million, twice the gross pecuniary gain

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1 derived from the offense or twice the gross pecuniary loss to
2 persons other than yourself resulting from the offense, a
3 maximum term of three years' supervised release, and a
4 mandatory \$100 special assessment.

5 I wanted also to draw to your attention, before I
6 continue, that the indictment contains a forfeiture allegation
7 through which the government has indicated it will seek to
8 recoup certain funds associated with the illegal conduct
9 described in the indictment.

10 Are you aware that the indictment contains a
11 forfeiture allegation?

12 THE DEFENDANT: Yes, I am, your Honor.

13 THE COURT: You may also be subject to an order of
14 restitution, pursuant to Title 18, United States Code, Sections
15 3663, 3663(a), and 3664.

16 Sir, if you are sentenced to a term of supervised
17 release and violate the conditions of that supervised release
18 such that it is revoked, you expose yourself to serving in
19 prison all or part of the term of supervised release authorized
20 by statute for the offense that resulted in such term of
21 supervised release, without credit for time previously served
22 on postrelease supervision.

23 Mr. Walsh, do you understand the nature of the charge
24 made against you at Count Two of the indictment?

25 THE DEFENDANT: Yes, I do.

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1 THE COURT: And do you also understand the range of
2 penalties, including the maximum sentence to which you are
3 potentially exposing yourself by your plea?

4 THE DEFENDANT: Yes, I am, your Honor.

5 THE COURT: Sir, do you understand that you have a
6 right to plead not guilty and to have a jury trial on the
7 charge contained in Count Two of the indictment?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that if you plead not
10 guilty and go to trial, the burden would be upon the government
11 to prove that you were guilty beyond a reasonable doubt?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you understand that at a trial you
14 would be presumed innocent until the government proved your
15 guilt beyond a reasonable doubt?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand that at such a trial and
18 at every other stage of the proceedings you would have the
19 right to be represented by an attorney and, if necessary, the
20 Court would appoint an attorney to represent you?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand that at a trial you'd
23 have the right to testify, to confront and question any
24 witnesses who might testify against you and the right not to be
25 forced to incriminate yourself, that is, you do not have to be

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1 a witness against yourself?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Do you understand that at a trial you
4 would be entitled to call witnesses to testify and to compel
5 the attendance of witnesses?

6 THE DEFENDANT: Yes, I would, your Honor.

7 THE COURT: Do you understand if you plead guilty,
8 there will be no trial of any kind so that you give up your
9 right to a trial and the only remaining step will be for the
10 assigned district judge to sentence you?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Sir, are you certain that you understand
13 the nature of the charge to which you are pleading?

14 THE DEFENDANT: Yes, I am.

15 THE COURT: Are you certain that you understand the
16 range of penalties, including the maximum sentence to which you
17 are potentially subjecting yourself by your plea?

18 THE DEFENDANT: Yes, I am.

19 THE COURT: Have you and your attorneys talked about
20 how the sentencing commission guidelines, which are advisory
21 only, might inform this sentence to be imposed upon you?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand that the sentencing
24 judge in determining the appropriate sentence for you is
25 obligated to calculate the applicable sentencing guidelines

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1 range and possible departures under the sentencing guidelines?

2 THE DEFENDANT: Yes, I am, your Honor.

3 THE COURT: Do you understand that in addition to the
4 factors outlined in the sentencing commission guidelines, the
5 sentencing judge will also consider factors that are set forth
6 at 18 U.S.C. Section 3553 in determining what an appropriate
7 sentence might be for you?

8 THE DEFENDANT: Yes, I am, your Honor.

9 THE COURT: Do you understand that the sentencing
10 judge may be obligated to impose a special assessment upon you?

11 THE DEFENDANT: Yes, I am.

12 THE COURT: Do you understand that parole has been
13 abolished and that if you are sentenced to prison, you will not
14 be released on parole?

15 THE DEFENDANT: Yes, I am.

16 THE COURT: Do you understand that the answers you
17 give to me today under oath and in the future may be used
18 against you in a prosecution for perjury or false statement if
19 you do not tell the truth to the Court?

20 THE DEFENDANT: Yes.

21 THE COURT: What are the elements of the offense set
22 forth at Count Two of the indictment?

23 MR. NAFTALIS: Yes, your Honor.

24 As to Count Two of the indictment, your Honor, which
25 charges securities fraud, there are three elements: First,

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1 that in connection with the purchase or sale of securities, the
2 defendant did one or three things: A, employed a device,
3 scheme or artifice to defraud; or, B, made an untrue statement
4 of a material fact or omitted to state a material fact which
5 made what he said, under the circumstances, misleading; or, C,
6 engaged in an act, practice, or course of business that
7 operated or would operate as a fraud or deceit upon a purchase
8 or seller.

9 Two, that the defendant acted knowingly, willfully,
10 and with the intent to defraud.

11 And, third, that the defendant used or caused to be
12 used any means or instruments of transportation or
13 communication in interstate commerce or the use of the mails in
14 furtherance of the fraudulent conduct.

15 THE COURT: Thank you.

16 Mr. Walsh, having heard the elements of the offense
17 that is outlined at Count Two of the indictment, is it still
18 your desire to tender a plea of guilty?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Have any threats been made to you by
21 anyone to influence you to plead guilty?

22 THE DEFENDANT: No.

23 THE COURT: Have any promises been made to you
24 concerning the sentence that you will receive?

25 THE DEFENDANT: No.

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1 THE COURT: I understand that you and your counsel and
2 representatives from the government have reached certain
3 agreements and understandings in connection with your tender of
4 a plea of guilty and those agreements and understandings have
5 been reduced to a writing to which your counsel made reference
6 earlier, writing dated April 24, 2014. I have a copy of that
7 document before me which I shall show you now.

8 Do you recognize the document, sir?

9 THE DEFENDANT: Yes, I do.

10 THE COURT: Did you have an opportunity to review it
11 with your attorney?

12 THE DEFENDANT: Yes, I have.

13 THE COURT: Is there anything contained in the April
14 24, 2014 writing that you do not understand?

15 THE DEFENDANT: No.

16 THE COURT: Among other things, there is text in the
17 April 24, 2014 writing for which you agree to make restitution
18 in an amount to be set at the time of sentence.

19 Are you aware of that, sir?

20 THE DEFENDANT: Yes, I am, your Honor.

21 THE COURT: And there is also text in the April 24,
22 2014 writing through which you admit the forfeiture allegation
23 that I reviewed with you earlier during the proceeding.

24 You're aware of that, sir?

25 THE DEFENDANT: Yes, I am.

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1 THE COURT: The April 24, 2014 writing also contains
2 an analysis of how the sentencing commission guidelines might
3 apply to your case.

4 Do you understand that notwithstanding the analysis of
5 the guidelines in the April 24, 2014 writing, the impact, if
6 any, that the sentencing commission guidelines may have on the
7 sentence to be imposed upon you is left solely to the
8 discretion of the sentencing judge?

9 THE DEFENDANT: Yes, I am, your Honor.

10 THE COURT: There is also text in the April 24, 2014
11 writing that constricts your ability to appeal from or
12 collaterally attack the judgment of conviction or sentence that
13 might be imposed upon you and, also, restricts your ability to
14 seek a sentence modification, pursuant to Title 18, United
15 States Code, Section 3582(c).

16 Are you aware of that, sir?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Let me show you the last page of the April
19 24, 2014 writing about which we have been speaking. Is your
20 true signature on that page?

21 THE DEFENDANT: Yes, it is, your Honor.

22 THE COURT: Did anyone force you to sign the document,
23 sir?

24 THE DEFENDANT: No.

25 THE COURT: Let me turn my attention to your counsel

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1 again. Is your signature also on the last page of the
2 document?

3 MR. TREMONTE: Yes, your Honor.

4 THE COURT: Have representatives of the government
5 also signed the last page of the document?

6 MR. NAFTALIS: We did, your Honor.

7 THE COURT: Mr. Walsh, other than the understandings
8 and agreements that you and your attorneys and representatives
9 from the government have made and reached that are outlined in
10 the April 24, 2014 writing about which we have been speaking,
11 have any other agreements or understandings been made or
12 reached with you in connection with your tender of a plea of
13 guilty?

14 THE DEFENDANT: I don't believe so, your Honor.

15 THE COURT: Is there any doubt in your mind?

16 THE DEFENDANT: No.

17 THE COURT: Do you wish to consult with your counsel
18 to ensure that there have been no other agreements or
19 understandings made?

20 THE DEFENDANT: Yes.

21 THE COURT: Do so, please.

22 THE DEFENDANT: I understand everything, your Honor,
23 relative to this document.

24 THE COURT: And let me ask again, other than the
25 understandings and agreements in the April 24, 2014 writing,

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1 have any other agreements or understandings been made or
2 reached with you in connection with your tender of a plea of
3 guilty?

4 THE DEFENDANT: No.

5 THE COURT: Sir, is your plea being made voluntarily,
6 that is, of your own freewill?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Did you commit the offense that is
9 outlined at Count Two of indictment 09 Cr. 722?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Would you tell me in your own words what
12 it is that you did that makes you believe yourself guilty of
13 the offense set forth at Count Two of the indictment?

14 THE DEFENDANT: Between 1996 and 2009, I was a
15 managing general partner at WG Trading Company, a limited
16 partnership that sold securities in the form of limited
17 partnership interests to investors.

18 In that capacity, I and others engaged in transactions
19 and practices that operated as a fraud and deceit upon the
20 limited partners of WGTC.

21 Specifically, I caused WGTI, an entity whose financial
22 information was incorporated into audited financial statements
23 of WGTC, to issue promissory notes that falsely stated that I
24 owed and would timely repay tens of millions of dollars to
25 WGTI.

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1 I did so knowing that the books and records and
2 audited financial statements of WGTC would be materially
3 misstated as a result, and that such misstatements would and
4 did operate as a fraud and deceit upon WGTC's limited partners.

5 THE COURT: When you engaged in the conduct that you
6 just described a few moments ago, where were you, sir?

7 THE DEFENDANT: Out of my office. I believe for the
8 most part out of my office in North Hills, Long Island.

9 THE COURT: In Count Two of the indictment it alleges
10 that certain activities used instrumentalities involved in
11 interstate commerce for the mails.

12 What, if anything, can you tell me about that?

13 MR. NAFTALIS: Your Honor, I'm happy to proffer what
14 the government would prove as to that, if it's helpful.

15 THE COURT: I would welcome anything that would
16 explain to me that portion of the charge in Count Two that I
17 made reference to.

18 MR. NAFTALIS: Absolutely, your Honor.

19 The government would proffer that at trial it would
20 prove that the defendant and his partners used faxes, the
21 mails, and wires that traveled into and out of New York State,
22 across state lines, and also that a bank account at Merrill
23 Lynch located in the Southern District of New York was used to
24 send wires and receive wires in interstate commerce.

25 THE COURT: Mr. Walsh, did you hear the recitation

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1 that Mr. Naftalis just made?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you contest any of those allegations?

4 THE DEFENDANT: No.

5 THE COURT: Assertions. Thank you.

6 Are there any questions the government would have me
7 put to Mr. Walsh?

8 MR. NAFTALIS: I think we are satisfied, your Honor.
9 Thank you.

10 THE COURT: Mr. Walsh, I want to address your counsel
11 once again. Are you aware of any reason why your client should
12 not plead guilty?

13 MR. TREMONTE: I am not, your Honor.

14 THE COURT: Is the government aware of any reason why
15 the defendant should not plead guilty?

16 MR. NAFTALIS: No, your Honor.

17 THE COURT: If the matter were to proceed to trial,
18 what evidence would be offered by the government in support of
19 a charge made in Count Two of the indictment?

20 MR. NAFTALIS: Your Honor, were the case to go to
21 trial in support of Count Two, which alleges the securities
22 fraud violation from 1996 through early 2009, the government
23 would prove that charge through the use of two or more
24 cooperating witnesses, bank records, including wire transfer
25 confirmations that I was alluding to earlier, account

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1 statements and account records, law enforcement testimony, and
2 lay witness testimony, among other things.

3 THE COURT: Can you give me some sense of what the
4 testimony by law enforcement witnesses and others who are not
5 law enforcement officers might be?

6 MR. NAFTALIS: Sure, your Honor. As to the law
7 enforcement witnesses, they would testify to a financial
8 analysis of the fraud, namely, monies in, monies out, and how
9 the defendant and his coconspirator misappropriated money from
10 the companies. That's one example.

11 As to lay witness testimony, your Honor, it would be
12 in the form of victims, institutional clients who invested with
13 the defendant's company, the representations that were made to
14 them about how the monies were to be invested, and there would
15 be evidence that the monies were not so invested 100 percent of
16 the time.

17 THE COURT: Thank you.

18 I'm satisfied that Mr. Walsh understands the nature of
19 the charge made against him in Count Two of indictment 09 Cr.
20 722. I'm also satisfied that he understands the consequences
21 of the plea of guilty. I'm satisfied that the plea is being
22 made voluntarily and knowingly and that there is a factual
23 bases for the plea, so I shall report and recommend to the
24 assigned district judge that the plea be accepted.

25 I direct that a presentence report be prepared prior

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1 to the date of sentence, which would be the 29th day of July,
2 2014 at 11:30 a.m. In connection with the preparation of that
3 report the government should provide its case summary materials
4 to the probation department not later than 14 days from today.
5 The defendant and his counsel should make an appointment with
6 the probation department not later than 14 days from today. I
7 shall direct the government to obtain a transcript of the
8 minutes made during this proceeding and present same to the
9 assigned district judge before the date of sentence.

10 Is there any request with respect to bail?

11 MR. NAFTALIS: No objection to it being continued,
12 your Honor.

13 MR. TREMONTE: The defendant requests that bail be
14 continued on the same terms that are presently in place, your
15 Honor.

16 THE COURT: The application is granted.

17 Is there anything else that we need to address?

18 MR. TREMONTE: No, your Honor.

19 MR. NAFTALIS: No, your Honor.

20 THE COURT: Thank you. Have a good day.

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